

February 14, 2003

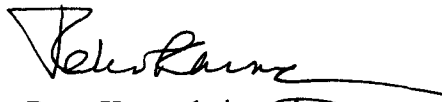

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

**Re: *Ex Parte*
 CC Docket Nos. 01-338, 96-98, and 98-147**

Dear Ms. Dortch:

Yesterday, the undersigned representative from InfoHighway Communications Corp. met with Commissioner Kevin Martin's legal advisor Dan Gonzalez. Attached for inclusion in the record of the above-captioned proceedings, pursuant to 47 C.F.R. § 1.1206(b), is a White Paper provided to Mr. Gonzalez yesterday. The document discusses why the Commission should retain shared transport as an unbundled network element.

Sincerely,


Peter Karoczkai 

cc: Dan Gonzalez
 Qualex International

THE COMMISSION SHOULD MAKE SHARED TRANSPORT AVAILABLE AS AN UNBUNDLED NETWORK ELEMENT

The evidence in this proceeding overwhelmingly establishes that a competitive carrier would be impaired without unbundled access to incumbent LEC shared transport facilities when seeking to use unbundled switching. As explained in the *UNE Remand Order* and in other orders,¹ without access to unbundled shared transport, a requesting carrier would have to self-provision or purchase dedicated transport from the incumbent, which would materially increase the costs and decrease the quality of services the requesting carrier could provide, and would materially limit the carrier's ability to serve a broad base of customers. No party in this proceeding has disputed these findings. Accordingly, the Commission should again conclude that incumbent LECs must provide unbundled access to shared transport whenever a requesting carrier purchases local switching or tandem switching from an incumbent LEC, whether as an unbundled element or otherwise.

Dedicated transport (whether self-provisioned or purchased from incumbent LECs) cannot be used in connection with the purchase of unbundled switching, because the volumes generated by customers served by competitive carriers through use of incumbent LEC local switching are too small to justify a dedicated facility. The record shows that competitors cannot reasonably be expected to construct their own transport facilities unless they have at least 18 DS3s of demand,² and there is no evidence (or likelihood) that competitors would generate such UNE-P-based demand from an individual LSO to any other individual point. Moreover, in the *UNE Remand Order* (§ 375), the Commission found that competitive LECs with small market share generally cannot forecast their interoffice volumes accurately.³ As a result, if required to purchase dedicated (rather than shared) transport as a UNE, a competitive LEC will typically be forced to purchase more capacity than it needs, and such capacity would lay unused because the competitive LEC lacks the steady traffic volumes necessary to keep it filled, creating a distinct, and in many cases insurmountable, competitive disadvantage for competitive LECs.

In addition, as traffic demands increase, a carrier requesting dedicated transport will incur a non-recurring charge each time it purchases additional transport capacity. By contrast, a carrier that requests unbundled shared transport effectively purchases the entire capacity of the incumbent LEC's network and will not incur new non-recurring charges ("NRCs") for additional increments of dedicated transport capacity. As the Commission has noted on multiple occasions in the past, increased NRCs also constitute a substantial barrier to competitive entry.⁴ Accordingly, unbundling shared transport, which allows competitive LECs to avoid these unnecessary NRCs, is important to reducing substantial barriers to competitive entry.

¹ See *UNE Remand Order* §§ 369-79; *Shared Transport Order* §§ 19-52; *Bell Atlantic-NYNEX Merger Order* § 190; see also *Southwestern Bell Tel. Cos. v. FCC*, 153 F.3d 597 (8th Cir. 1998) (upholding shared transport).

² 11/25/02 AT&T Ex Parte, Att. A.

³ See *UNE Remand Order* § 375; AT&T Reply at 362.

⁴ AT&T Reply at 364; *UNE Remand Order* § 376; *Shared Transport Order* § 50.

Unbundled shared transport is critical to enabling competitive LECs to provide a quality of service comparable to the incumbent LECs. As the Commission has explained, and as the record here confirms, shared transport is necessary to enable competitive to handle traffic at peak loads and maintain call blockage levels that are at parity with those of the incumbent LECs.⁵ A new entrant entering a local market with smaller traffic volumes would have to maintain greater excess transport capacity relative to the incumbent LEC in order to provide the same level of service quality (i.e., same level of successful call completion) as the incumbent LEC.⁶ A requesting carrier would therefore be impaired in its ability to offer service without shared transport, because it would otherwise be forced to choose between purchasing excess capacity or suffering poorer call blockage rates.

There is a consensus that shared transport must be provided by the incumbent where unbundled switching is made available as a UNE. In such circumstances it is simply not feasible for competitive carriers to self-provide transport with incumbent-provided switching.

Finally, the Commission should clarify that incumbents are required to provide “transiting” at TELRIC rates. Transiting is the use of an incumbent’s tandem switching and shared transport functionalities to enable termination of local or intraLATA traffic between competitive LECs, independent companies, or wireless providers (known as “third party carriers” in this context) that are not directly interconnected. Use of the incumbent LEC’s local tandem is essential to a competitive carrier’s ability to efficiently exchange traffic with third party carriers, from both a traffic routing and administrative perspective.

There is no evidence that competitive LECs offer an alternative transit service that would provide the necessary connections to other third party carriers. The only alternative to the use of transiting arrangements is for a carrier to use direct interconnection trunks with each of the other non-incumbent LEC entities with which it must exchange traffic. Given the very small amount of traffic that is exchanged between pairs of non-incumbent carriers in a given area, none of those trunks could be deployed economically by the competitive carrier, and there is no evidence of any alternative to use of the incumbent’s facilities. Thus, the costs of establishing such multiple direct interconnections among all such carriers would be prohibitive. Moreover, in addition to the prohibitive network costs and inefficiencies associated with requiring multiple direct interconnections for the exchange of low volumes of traffic with third party carriers, such a requirement would also impose significant transactional costs upon competitive carriers because of the need to negotiate, implement and manage traffic exchange agreements between every third party carrier with which a competitive carrier exchanges traffic.

Transiting is required by section 251(c)(2). That provision requires incumbents LECs to allow interconnection “for the transmission and routing of telephone exchange services and exchange access” which includes the obligation to provide transiting functions to enable competitive carriers LECs to implement indirect interconnection. Thus, section 251(c)(2)

⁵ *UNE Remand Order* ¶ 378; *Shared Transport Order* ¶ 51; see also AT&T Reply at 363.

⁶ *UNE Remand Order* ¶ 378; see also AT&T Reply at 363.

provides an additional statutory basis to require incumbent LECs to offer cost-based access to the UNEs needed to perform the transit functions.